

BOARD OF EQUALIZATION

USE FUEL TAX REGULATIONS

Regulation 1334. SUCCESSOR'S LIABILITY.

Reference: Sections 9021, 9022, 9023, 9024, Revenue and Taxation Code.

(a) WHEN DUTY TO WITHHOLD PURCHASE PRICE ARISES. The requirement that a successor or purchaser of a business or stock of goods withhold a sufficient amount of the purchase price to cover the tax liability of the seller arises only in the case of the purchase and sale of a business or stock of goods under a contract which provides for the payment to be made to the seller or to a person designated by the seller of a purchase price consisting of money, property or the assumption of liabilities or a combination of forms of consideration. The liability of the successor can be no more than the amount of the purchase price. This requirement does not arise in connection with other transfers of a business such as assignments for the benefit of creditors, foreclosures of mortgages, or sales by trustees in bankruptcy.

(b) AMOUNTS TO WHICH LIABILITY EXTENDS. The liability of the successor or purchaser of a business or stock of goods extends to taxes incurred with reference to the operation of the business by the predecessor or any former owner, including the sale thereof, even though not then determined against former owner, to interest thereon to the date of payment of the taxes, to penalties for nonpayment of taxes, and to penalties for negligence or intentional disregard of the Use Fuel Tax Law or authorized rules and regulations, or for fraud or an intent to evade the tax determined and unpaid at the time of sale.

(c) RELEASE FROM OBLIGATION. The purchaser of the business or stock of goods will be released from further obligation to withhold the purchase price if the purchaser obtains a certificate from the board stating that no taxes, interest, or penalties are due from a predecessor. The purchaser will also be released if he or she makes a written request to the board for a certificate and if the board does not issue the certificate or mail to the purchaser a notice of the amount of the tax, interest, and penalties that must be paid as a condition of issuing the certificate within 60 days after the latest of the following dates:

- (1) The date the board receives a written request from the purchaser for a certificate.
- (2) The date of the sale of the business or stock of goods.
- (3) The date the former owner's records are made available for audit.

The certificate may be issued after the payment of all amounts due under the Use Fuel Tax Law, according to the records of the board as of the date of the certificate, or after the payment of the amounts, including amounts not yet ascertained, is secured to the satisfaction of the board.

(d) ENFORCEMENT OF OBLIGATION. The liability is enforced by service of a notice of successor liability not later than three years after the date the board receives written notice of the purchase of the business or stock of goods. The successor may petition the Board for reconsideration of the liability within 30 days after service. The liability becomes final, and the amount due and payable, in the same manner as determinations and redeterminations of other use fuel tax liability.

(e) SEPARATE BUSINESS LOCATIONS. Where one person operates several business establishments, each at a separate location, each establishment is a separate "business" and has a separate "stock of goods" for purposes of determining the liability of a successor. A purchaser of the business or stock of goods of any such establishment is subject to liability as a successor with respect to that establishment even if he or she does not purchase the business or stock of goods of all the establishments.

Regulation 1334. SUCCESSOR'S LIABILITY. (Continued)

(f) PURCHASE OF A PORTION OF A BUSINESS. A person who purchases a portion of a business or stock of goods may become liable as a successor. For example, the purchaser may be liable where he or she purchases substantially all of the business or stock of goods or where the business or stock of goods is purchased by two or more persons. In cases of doubt as to possible liability, the purchaser should obtain a certificate as provided in (c) above.

History: Adopted August 24, 1988, effective April 15, 1989. In subdivisions (a), (b), (c), (d), (e) and (f) adopted provisions that provide for successor's liability and withholding when a vendor sells a business or stock of goods or quits business.

Amended May 19, 1992, effective July 31, 1992. Amended subsection (d) to reflect statutory changes adopted in Chapter 74, Statutes of 1990, to require the Board to serve a notice of successor's liability within three years of the date the Board is notified of the purchase of a business or stock of goods. The amendments also: clarified subsection (a); corrected an error in subsection (c) by substituting "does not issue" for "issues" in the second sentence; made the language of the regulation gender neutral.